



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1998

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR98-0126

Dear Ms. Joseph:

You ask this office to reconsider our ruling in Open Records Letter No. 97-2484 (1997). Your request for reconsideration was assigned ID# 112435.

The Comptroller of Public Accounts (the "comptroller") received a request for "a list of all cities audited since September 1, 1996, in accordance with provision of Title 6 of the Property Code (Chapter 72 through 75) to include by City the total number of reportable periods covered and the amount of any assessment due the State." In Open Records Letter No. 97-2484 (1997), this office concluded that section 111.006(a)(2) of the Tax Code makes confidential the amount of the assessment due to the state. In your request for reconsideration, you contend that the dollar amount due the state is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 74.702(b) of the Property Code, and is not confidential under section 111.006(a)(2) of the Tax Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 74.702 of the Property Code, part of the unclaimed property law, provides as follows:

(a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the comptroller, the attorney general, or an agent of either, at any reasonable time, may examine the books and records of any holder.

(b) *The comptroller, the attorney general, or an agent of either* may not make public any information obtained by an examination made under this section and may not disclose that information except in the course of a judicial proceeding, authorized by this chapter, in which the state is a party or pursuant to an agreement with another state allowing joint audits or the exchange of information obtained under this section. [Emphasis added.]

You explain that local governmental entities hold unclaimed property and, therefore, their books may be examined by the Comptroller pursuant to this provision. You explain that "the comptroller may examine the books of any holder of unclaimed property to determine whether unclaimed property has been properly reported and delivered to the state." You note that this section does not make a distinction between private and public entities in the application of the unclaimed property provisions. You state, however, that this office has recently concluded that section 111.006(a)(2) of the Tax Code, which also does not distinguish between private and public entities, applies to governmental entities that are audited by the comptroller for any tax or fee under that provision. See Open Records Letter No. 97-2295 (1997).

We believe that section 74.702 of the Property Code makes confidential information obtained from a governmental body regarding the status of unclaimed property in its possession. Thus, the amounts of the assessments due the state are confidential under this provision. Open Records Letter No. 97-2484 (1997) is overruled to the extent it conflicts with this ruling.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref: ID# 112435

Enclosure: Submitted document

cc: Mr. C.M. Hein, Jr.
Director of Financial Services
City of Laredo
P.O. Box 579
Laredo, Texas 78042
(w/o enclosure)